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TRIAL OF ARCHIBALD L. BATES, FOR MURDER.

Before the Bannington Co. Court, Dec. Term, 1838.
S. H. BLACKMER, State's Attorney.
Counsel for Prisoner, Harmon Canfield, Daniel Roberts Jr. and Wm. S. Southworth.

Q.—I cannot state the time certain, but within three or four years, the prisoner stated that the deceased should not live to enjoy my property, where I now live. At the second time he told me, he put such emphasis on it, I said to him you must remember there is a God in Heaven who rules all these things; after I made this remark, he said it was in his power to prevent it, and he should do it. On the night of the 2d of October last, I was coming in from work and met him in the orchard, had some conversation in respect to property, one word brought on another, and he appeared very angry; I started along to go towards the house, he also started and went a few steps, took up a piece of chestnut rail about eight feet long, stepped in great fury to an apple-tree, struck the tree, broke the rail and said, "you bear no more fruit forever." I stepped along, he then said this woman, Philorman Bates' wife, should not live to enjoy that property. I got over the fence, he called out to me in great agitation, "how long will you idolize that yellow haired brute of a woman?" I asked him if he thought I was so old and childish that I did not understand my own business;—he then said I should see more or a greater amount of trouble that night than I ever saw in my life before. I then started to go towards the house, he went past me, when I got into the yard of the house he stood at the door talking to his mother in great agitation, walked backwards and forward, took his mother's hand, shook it and bade her a long and lasting farewell. When he started I got much alarmed, and watched him, he started from the door and went hastily into the road, crossed the road and got into the lot, seemed to run, appeared urged on by anger or fear, he went straight across towards the place of his residence. From that time my son Philorman being busy in his concerns, doing chores, I sought an opportunity to talk with him. He went into my room and into the bed-room in the north-east corner of the house, the window is on the north side, foot of the bed towards the window;—Philorman took a seat at the foot of the bed, I at his left hand farthest off from the window; I had just closed telling him what my fears were in respect to himself and family, when there was the report of a gun at the north side of the house, west of us. We both sprang on our feet and saw a man running; my son Philorman being nearest the window, he had the first sight of him; I saw the man after he had a chance to move from the place where the gun was fired, about twenty feet, he was within six feet of an apple-tree on the north side of the house. I saw him run till he came to the fence by the road, he appeared to jump over the fence, ran down a road and skulked behind the end of a wall under some butternut-trees, I then started out and went to the fence determined to know who it was, as I reached the fence heard the infant cry, I turned, went in and saw the woman on the floor and discovered that she was shot, her husband trying to raise her up, appeared to be unable, called for help, they got her up and laid her on the bed.

Q.—How long did she live?
A.—A short time, an hour, perhaps more.
Q.—Did the prisoner at the time he was in the orchard take up an apple?
A.—He did, but it and threw it down.
I omitted saying after he told me the woman should not live, he stretched out his arm, and said "Oh if I durst." His appearance struck me sensibly that some of the family were in imminent danger.

Q.—How many times had he made these threats?
A.—Twice.

Q.—Had he been on intimate terms with the family?

A.—He had not been in the room where Philorman lives for two or three years, but in mine.

Q.—Did you know the man who ran past the window?

A.—No. From my alarm and the motion of the man I was forcibly struck with the idea that it was the prisoner at the bar.

Cross Examination.

Q.—When and where were the previous threats made?

A.—I cannot state.

Q.—Did you relate at the examination what you have now said, of prisoner's language about the yellow-haired brute, biting the apple and breaking the rail?

A.—I have since recollected some things that I did not remember at the examination.

Q.—Did you not say that you could not give the exact language of the prisoner only the idea?

A.—I did not pretend to give it word for word, but the substance.

Q.—You say the prisoner was very much agitated?

A.—Yes.

Q.—Did he appear to be out of his head?

A.—No.

Q.—Did you not on examination say you did not see the individual until he was in the shade of the apple-tree?

A.—I saw him under shade of apple-tree.

Q.—How did you know the gun was fired near the house?

A.—It was my impression.

Q.—In what direction is Sylvanus Bates' house?

A.—Near northerly.

Q.—In what direction did the man run?

A.—In a north-easterly direction, not exactly.

Q.—Where is the wall?

A.—On side of the house.

Q.—What distance is the apple-tree from the house?

A.—Where is your door yard gate?

A.—From West end of house gate is West of the house.

Q.—Where did your son go when he parted from his mother?

A.—Northwardly.

Q.—Did you take a candle into the bed-room when you went in with Philorman?

A.—No.

Q.—Are you father of respondent?

A.—I am so called.

Q.—Has your son applied to you for funds to procure counsel?

A.—Yes.

Q.—Did you furnish them?

A.—No.

Q.—When prisoner went out of the house after parting with his mother what course did he take?

A.—An Easterly course.

Q.—What is the distance to Sylvanus Bates?

A.—About 200 rods.

Q.—What time was it?

A.—About sunset.

Q.—How long before the woman was shot?

A.—She was shot a little after 7 o'clock, P. M.

PHILORMAN BATES, Sworn—

When I was returning from my work, I saw my brother pass the house on the North side; I and the hired man drove up to the house and unloaded potatoes, went to the barn, unharnessed, returned to the house, took pails and milked, strained the milk, set pails in milk-room and washed me, and went into the kitchen. Father asked me to go into his room, I followed him into the bed-room. He told me my brother's threats. We heard report of a gun, I sprang up and saw a man running north-easterly from the window where my wife was sitting, he ran betwixt an apple-tree and stake for hanging clothes, he got on to the fence; I heard my child cry, ran into my room, the child was falling from my wife's lap to the floor, I caught the child before it reached the floor. I gave the child to my father, and tried to raise up my wife, but was unable, called to my hired man, he helped me lay her on the bed, as I passed the window I perceived there was a ball hole in the window. I sent the hired man to alarm the neighbors. He went.

Q.—At what time did you see the man after the gun was fired?

A.—I took but a step.

Q.—What distance was the man from the window?

A.—He was about 12 or 15 feet from the window where my wife was shot.

Q.—In what position was he?

A.—He was partly upon a wheel and a run.

Q.—Was he in shade of trees?

A.—No.

Q.—What distance was the man from where you stood?

A.—Twenty-five feet.

Q.—Did you know the man?

A.—I have no reasonable doubts, the night was very light, the man had a gun in his hand, it was my brother, the prisoner; I knew him when I saw him—he ran about 18 feet before he was shot.

Q.—From what did you judge it to be your brother?

A.—From his appearance, his look and his motion. He runs lower than common men. I cannot be mistaken.

Q.—What do you know of his previous threats?

A.—About three or four years since he said if I did not remove her he would be the death of her if he suffered his own life in consequence.—The grudge has never been removed, and he has ever shown the same feelings.

Q.—What did you do after this threat?

A.—We removed our lodgings to another room about a week afterwards, to a room where we thought we should be more safe.

Q.—Did you ever remove from the house in consequence of his threats?

A.—Yes; for about a week.

Q.—When you saw the man run had he a gun in his hand? A.—Yes.

Q.—How large is the bed-room where you and your father were?

A.—It is eight feet one way, larger the other.

Q.—Did you and your father arrive at the window together?

A.—No. I arrived at the window first.

Q.—How do you know he had a gun?

A.—I saw it.

Q.—Could you tell whether the barrel of the gun was bright?

A.—It had a brownish glisten.

Q.—Was you not liable to be mistaken?

A.—We are all liable.

Q.—Would not any person under such circumstances have run as he did?

A.—I never saw a man run like him; it was a low squat run.

Q.—How high were the windows from the ground?

A.—3 feet, perhaps 3 1-2.

Q.—In what position was the gun?

A.—It was pointing I should say in his right hand.

Q.—Did he apply to you for help for his defence, and you refuse?

A.—Yes; I thought it my duty.

Q.—Could he have hit the woman by firing, without kneeling?

A.—I think he could.

Q.—Have you not said that you would do all in your power to procure your brother's conviction?

A.—No.

HEMAN DAVIS, Sworn—

I live with Philorman Bates, on the 2d of Oct. 1838, the sun about half an hour high, I saw Mr Archibald L. Bates about half way between the house and orchard. Mr Philorman Bates and myself went to the barn and unharnessed, I there saw him in about the same place going towards the house;—I went in; Mrs Harriet Bates asked me to take her child, which I took and sat down by the window; the clock struck seven while I held the child. Mrs Bates sat at the end of the table; she then took the child, I went out, washed me, and while out, heard a gun; thought it a rifle very lightly loaded. Thought it was some boy going by and fired a squib. I went in, Philorman said his wife was shot. The child was nursing; Philorman said, carry the child to my Mother;—I did. I helped Philorman lay his wife on the bed. I then went to John Niles's and alarmed them.

Q.—How did you know it was a rifle?

A.—A rifle gives a sharper sound than a shot gun.

Q.—Was you knowing Archibald L. Bates' being about the house?

A.—On the night of the 2d of October in August, I slept in the barn, a person came to the barn; in the morning a short ramrod was found at the barn door; he said I worked with the day before was bent up.

Q.—If you put the same quantity of powder into a smooth-bore gun, will it not make the same noise?

A.—No.

Q.—Are not some of your neighbors in the habit of going 'cock hunting'?

A.—Not that I know of.

Q.—Where was the old lady, and had she a light?

A.—She was in her room, and had a light.

GARDNER W. BATES, Sworn—

Q.—How old are you?

A.—Eleven years.

Q.—Did you see Archibald L. Bates on the night of the second of October?

A.—Yes, I saw him take a rifle from the hooks and go towards the wood-shed.

Q.—Where did the rifle hang?

A.—Over head in the kitchen. It belongs to Sylvanus Bates.

Q.—Is this the rifle?

A.—Yes.

Q.—How long did he stay when he came in?

A.—I do not know.

Q.—Did you see him when he came in?

A.—Yes.

Q.—How long was it before that that you saw Archibald L. Bates?

A.—Five or ten minutes. He was going right West, on the South side of the house. He was East of the South door and going West with a rifle in his hand.

Q.—Did you see him again that night?

A.—No.

Q.—Who was in the room when he took the rifle?

A.—Minerva, Almira, and I.

Q.—Did you, at the examination, say you saw Archibald L. Bates out of doors?

A.—No, I did not think of it.

Q.—How do you know he went into the wood-house?

A.—I looked out of the window.

Q.—Where was you when Rollin Blackmer came in?

A.—Sitting in the house.

Q.—Did you see Archibald L. Bates with a gun in his hand?

A.—Yes, I was not more than a rod or a rod and a half from him.

Q.—Bates had on his head?

A.—I do not, I believe it was a straw hat.

MINERVA BATES, Sworn—

Says she saw Archibald L. Bates take the gun from the hooks and go towards the wood-shed.

Q.—When did you see him again?

A.—In a short time he came in and stayed a little while and then went out. Says Archibald L. Bates had been in a short time when Rollin Blackmer came.

Q.—When did you see the gun again?

A.—Next morning. Archibald L. Bates sat in a chair when Rollin Blackmer came in and told him that Harriet was killed. Archibald L. Bates said "is it possible that life has left that woman?" His wife said to him, "what an awful thing this is!" He replied, "justice must take place some time or other."

Q.—Did you testify before the examination that you heard these expressions?

A.—I think I did not, for I did not think of it.

Q.—What was Archibald L. Bates' appearance?

A.—No different from usual.

Q.—Was you looking at him?

A.—Cannot tell.

Q.—What time did he go out the last time?

A.—It was candle light.

Q.—Had the family been to supper?

A.—No.

Q.—Was Mr Bates in the habit of using this gun when he pleased?

A.—He was.

Q.—Did you ever before know him to take it in the night?

A.—No.

ROLLIN G. BLACKMER, Sworn—

Says he heard some one call for his father: it was John Niles' son. He said that somebody had shot Philorman Bates' wife. When I rode in front of the house, Benjamin Olin and John Niles were in the road, and requested me to go and see if Archibald L. Bates was there. Went into the kitchen, told the family that Philorman Bates' wife was shot. I asked if Archibald L. Bates was there? He said yes, spoke loud.—Sat a minute or two, saw Archibald L. Bates sitting by the fire-place, went in and told him Philorman Bates' wife was shot. He said, "is it possible that life has left that woman?" he repeated it. Just after I went in I observed he had some dirt on the right knee of his pantaloons. He crossed his legs the left over the right. His left shoe was wet two-thirds of the way up the quarters.

Q.—Did you notice anything about his breathing?

A.—I thought he breathed harder than usual.

Q.—Did he look up while you was in?

A.—I think not.

Q.—Is he your relative?

A.—Yes.

Q.—How far do you live from Sylvanus Bates's?

A.—About a mile.

Q.—Did you at Shaftsbury testify that the left shoe was wet?

A.—I think I did.

Q.—Did you ask Sylvanus Bates if Archibald L. Bates had been there all the evening?

A.—I did and he said he had not.

Q.—How long did it take you to go to Philorman Bates's and from there to Sylvanus Bates's?

A.—Ten minutes.

SYLVANUS BATES, Sworn—

Q.—Do you know this rifle?

A.—Yes it is mine; I usually kept it hanging on the hooks. In the afternoon the prisoner told me he was going over to the Bates place to get some berries. At dusk I saw him going from the direction of Philorman Bates's with buckthorn bushes which he laid on the wood-pile. After this he came in, went into the east-room, past out again while I was at supper. After supper I went into the east-room and tarried there till Rollin G. Blackmer came in, ten minutes before that I heard some one in room, looked, saw that it was Archibald L. Bates.

Rollin Blackmer asked if Archibald L. Bates was in the house. I told him he was in the south entry or up stairs. I went out at the east door. Archibald L. Bates was sitting back of the stove between that and the fire-place. Blackmer told him Philorman's wife was shot; I did not hear the reply.

Q.—Where did you find the gun?

A.—I found the gun in the east room behind the door.

Q.—Where did you find the ramrod?

A.—About a rod from the hog-pen.

Q.—Are these balls and patches suitable for that rifle? A.—Yes.

Q.—Should you think that ball similar?

A.—It appears to be about the same.

Q.—What is the difference between the report of a gun and a rifle?

A.—A rifle makes a sharper noise.

Q.—Did you find another gun loaded in the house?

A.—I did. I saw that night the gun was primed.

Q.—Is there a passage from the east room to the kitchen?

A.—Yes.

Q.—Did you before examination, say you looked over your shoulder and saw Archibald L. Bates? A.—I did.

Q.—Is that a smooth or creased rifle?

A.—It is creased.

Q.—Is it different from other guns?

A.—I presume there are other rifles in the neighborhood that carry the same sized ball.

Q.—Is this cloth such as is commonly used for patches?

A.—Yes.

Q.—Do you know of his using the gun the Sunday before?

A.—He and my son went hunting a short time before, and had this gun.

Thinks it was three-fourths of an hour from the time Archibald L. Bates left home to the time of his return. Have myself travelled to Philorman Bates's and back in half an hour.

JOSHUA W. MUNROE, Sworn—

Says he found a powder-horn, seventeen balls, and a piece of cloth on the wall of the house of October last—arrested him a little past eight o'clock. I went that evening to Philorman Bates's directly. Mr B. F. Olin directed me to S. Bates's and see if Archibald L. Bates was there, and bring him immediately. I went, found him apparently asleep, I told him I wished him to go to Philorman's. He asked who wanted him, I told him B. F. Olin for one. He said he should not go for B. F. O. I told him he would. He asked if he should have to go into his brother's room. I told him I did not know. After I got him there I searched him and found these things. Before we got to the house he said he never should go into Philorman's room alive.

JOSHUA B. MATTESON, Sworn—

Says Archibald L. Bates has lived with him. I heard him one morning when looking out of my window say, "that he wished God in his mercy would relieve Philorman of his burden."—About three weeks before the death of Mrs Bates. He was in the habit of being out in evenings half an hour. I used to ask him where he had been. He said in the orchard eating apples.—We were once talking about Strang's shooting Whipple, and he said he believed a ball would go through a window and make no larger hole than its own size. This he said to me several times. I told him I had heard that glass would cause a ball to glance. He said it would not, he had tried it to his own satisfaction.

DR. HORACE MAY, Sworn—

Says on the evening of the 2d of October, he was called to Philorman Bates's. Mrs Bates was on the bed, covered with blood. I removed a cloth, found she was wounded with a ball, above the right eye. She lived about one hour and a half. After laying back the integuments which cover the skull found that it was wounded externally. On dissecting, found a leaden ball in the back part of the head, and a bit of brain and skull. The course of the ball was backward and upward and downwards. The portion of the bone shown was lodged in the brain by the force of the ball.

ELLIOTT BROWN, Sworn—

Says on the morning of the 3d of October, examined the head of Mrs Bates, found the ball had passed through the brain obliquely, struck the back part of the head above the left ear, turned downwards, apparently rolled down to the lower part of the head; found a piece of bone in centre of the brain.

Witnesses on the part of the Prisoner.

CLARK BATES, Sworn—

I was fourteen years old last September, I went a hunting with Archibald L. Bates the Sunday before the murder, and I think Archibald carried the rifle and balls, now in court. Archibald carried the ammunition for the gun in court.

B. F. OLIN, Sworn—

Says the distance from Sylvanus to Philorman Bates's is about a mile and a quarter by the road. To cross in a direct line from road at Philorman's to Sylvanus Bates is two hundred rods, Sylvanus's is about fifty rods West. It is thirty-eight feet from the corner of Philorman's house to the West door-yard fence, forty-five feet from the side of the house to the garden fence, garden is West of the house. The apple-tree is twenty-seven feet North of East corner of the house. Thinks when heard of the murder of Mrs Bates the moon was three hours high and

shone very bright. East of the house is low wet ground—towards Sylvanus Bates's land is level sixty or seventy rods, then descends North-west, then rises a little, then descends North-west again; there are two pieces of woods between the two houses.

Q.—Did you examine the hole in the window?

A.—I tried to put one of the bullets through the window next morning, it would just go thro' without a patch.

Says the same patch produced in court is the same patch that Mr Fisk handed to him.

PELEG FISK, Sworn—

Says he thinks the patch produced in court is the same he found on the morning of the 3d of October, about a foot and a half from the window.

The case was committed to the jury at about nine o'clock in the evening, by Chief Justice Williams, in a terse and feeling charge; the most important part of the testimony was repeated, and presented in its true light to the jury;—